

STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

IN THE PORTER CIRCUIT COURT

CAUSE NO. 64D05-0510-PL-9134

IN RE: EDWARD B. ARMSTRONG, and)
D & C HOME CONSTRUCTION, LLC) AVC NO. 05-042
)
Respondents.)

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, and the Respondents, Edward B. Armstrong and D & C Home Construction, LLC, enter into an Assurance of Voluntary Compliance ("Assurance") pursuant to Indiana Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes *prima facie* evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. The Respondent, Edward B. Armstrong, is an individual engaged in the home improvement business, with a principal place of business located in Porter County at 61 Bass Drive, Portage, Indiana 46368, and transacts business with Indiana consumers.
2. The Respondent, D & C Home Construction, LLC is a domestic limited liability company engaged in the home improvement business, with a principal place of business located in Porter County at 61 Bass Drive, Portage, Indiana 46368, and transacts business with Indiana consumers.
3. The terms of this Assurance apply to and are binding upon the Respondents, their employees, agents, representatives, successors, and assigns.

4. The Respondents acknowledge the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code § 4-6-9-4 and Ind. Code Ch. § 24-5-0.5.

5. The Respondents acknowledge they have been advised the Attorney General's role in this matter is to serve as counsel for the State of Indiana and the State of Indiana has not given the Respondents any legal advice regarding this matter. The Respondents expressly acknowledge the State of Indiana has previously advised the Respondents to secure legal counsel prior to entering into this Assurance for any legal advice the Respondents require.

6. The Respondents agree, in every home improvement transaction they enter into, they will provide a completed home improvement contract complying with Ind. Code § 24-5-11-10 to the consumer before it is signed by the consumer. The Respondents agree the contract must contain at a minimum the following:

- a. The name of the consumer and the address of the residential property that is the subject of the home improvement;
- b. The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- c. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- d. A reasonably detailed description of the proposed home improvements;
- e. If the description required by Indiana Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- f. The approximate starting and completion dates of the home improvements;

- g. A statement of any contingencies that would materially change the approximate completion date;
- h. The home improvement contract price; and
- i. Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legibly printed or a typed version of that person's name placed directly after or below the signature.

7. The Respondents agree each of its home improvement contracts will be in a form each consumer who is a party to the contract can reasonably read and understand, as required by Ind. Code § 24-5-11-10(b).

8. The Respondents agree, before the consumer signs the home improvement contract and before the consumer can be required to make a down payment, the Respondents will have agreed unequivocally by written signature to all of the terms of the home improvement contract, as required by Ind. Code § 24-5-11-11.

9. The Respondents agree they will give a fully executed copy of the home improvement contract, showing the dates the Respondents and each consumer executed the contract, to the consumer immediately after the consumer signs it, as required by Ind. Code § 24-5-11-12.

10. The Respondents, in soliciting and/or contracting with consumers, agree to refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*

11. The Respondents agree to refrain from conducting any home improvements until they have first obtained all necessary licenses or permits required by law.

12. The Respondents, in soliciting and/or contracting with consumers, agree they will not represent the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses or benefits it does not have which the Respondents know or should reasonably know it does not have, as required by Ind. Code § 24-5-0.5-3(a)(1).

13. The Respondents, in soliciting and/or contracting with consumers, agree to obtain the necessary permits or other licenses as required by law, as required by Ind. Code § 24-5-11-9 and § 24-5-0.5-10(a)(1)(A).

14. The Respondents, in soliciting and/or contracting with consumers, agree to refrain from conducting any business activity in the State of Indiana, unless those activities are in full compliance with the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3.

15. Upon execution of this Assurance, the Respondents shall pay consumer restitution in the amount of Five Thousand Dollars (\$5,000.00) to the Office of the Attorney General on behalf of Stephen F. Madaras of South Bend, Indiana.

16. Upon execution of this Assurance, the Respondents shall pay costs in the amount of Three Hundred Dollars (\$300.00) to the Office of the Attorney General.

17. The Respondents shall not represent the Office of the Attorney General approves or endorses the Respondents' past or future business practices, or execution of this Assurance constitutes such approval or endorsement.

18. The Respondents shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

19. The Office of the Attorney General shall file this Assurance with the Circuit Court of Porter County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 26 day of Sept, 2005.

STATE OF INDIANA

STEVE CARTER
Indiana Attorney General

By:

Terry Tolliver
Terry Tolliver
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RESPONDENTS

Edward B. Armstrong
EDWARD B. ARMSTRONG

D & C Construction
D & C HOME CONSTRUCTION, LLC

Edward Armstrong
Printed Name

Owner
Title

APPROVED this 24 day of Oct, 2005.

MR. Hager
Judge, Porter County Circuit Court

Distribution:

Terry Tolliver
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Edward B. Armstrong and
D & C Home Construction, LLC
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